

**STATEMENT OF SENATOR SAM BROWNBACK  
COMMITTEE ON THE JUDICIARY  
“COMPETITION, INNOVATION, AND PUBLIC POLICY IN  
THE DIGITAL AGE: IS THE MARKETPLACE WORKING TO  
PROTECT DIGITAL CREATIVE WORKS?”**

**March 14, 2002**

- Our society is transitioning from an analog to a digital world, characterized by bandwidth-intensive Internet applications and the broadband connections required to access them. This transition holds great promise for continued industry innovation and productiveness, as well as opening up a whole new world for consumer and community access to information, entertainment, education, and health care. The digital revolution and the emergence of broadband connectivity could be the single most important factor in the continued economic growth and development of our nation in the 21<sup>st</sup> century.
- Today, the Committee seeks to review the role of copyright protection in this new digital environment. I am fortunate to sit on two Committees – Judiciary and Commerce – that have equally important roles to play in this transition.
- The Judiciary Committee is charged with ensuring the rule of law – copyright law – is obeyed while the rights of consumers are protected. This will ensure digital content is widely available online, in turn helping to create demand for broadband connections needed to access such content. The Commerce Committee is charged with ensuring that consumers have access to a competitive choice in broadband supply – the infrastructure required to make broadband connections available to consumers.
- Just one year ago, I found myself in the Commerce Committee urging broadcasters and consumer electronics companies to work harder to resolve their concerns over digital piracy in order to move the transition to digital television forward. I explained at that time that if they failed Congress would do it for both of them, and likely to their mutual dissatisfaction. Today, I find myself in the Judiciary Committee making similar statements, but also making it clear to everyone that copy protection is *not* the panacea of broadband deployment and acceptance. In my view, broadband demand and supply are symbiotic in nature, not an either/or proposition.
- Content producers cannot be expected to make digital content widely available online if it will simply lead to a “perfect” form of piracy. At the same time, digital copy protection solutions must permit information technology and consumer electronics companies to innovate and create products consumers demand. In my view, federal regulation of these issues will simply ensure that technology is tied to those regulations. Innovation will be sapped. This does not benefit consumers, IT and consumer electronics companies, nor will it ultimately benefit content producers.
- Rhetorically at least, most industry partners *seem* to agree on the need for balance

between copy protection and innovation. They seek an industry agreed-upon method for addressing copy protection. While it is disappointing, given the rhetoric, that such an agreement has not been reached, I am willing to extend the benefit of the doubt a little longer.

- I encourage the witnesses here today to redouble their efforts to work on digital copy protection solutions – broadband demand -- to create a secure digital environment in which industry, consumers, and entire communities can benefit and thrive. Resolution of these issues can and should be a win-win scenario for all industries involved. The alternative *is* likely to be some form of legislation, and I seriously doubt any company involved in this process will be very satisfied with the result. The marketplace, not Congress, should find an answer.
- This is only part of the reason why the transition to digital seems to be stalling. At last count a mere 10% of the nation subscribes to broadband services. As we focus on broadband demand issues today, it is important that we recognize that digital content *is* available online. Through websites like Intertainer.com, consumers have access to bandwidth-intensive content online, yet they are not snapping up existing broadband connections in order to do so. This very clearly suggests that copy protection alone is hardly the panacea of broadband acceptance that some would like us to believe. Existing broadband connections still takes hours to download movies. Do any of us really believe that consumers will trade a trip to Blockbuster for the Internet when going to Blockbuster is quicker?
- Clearly broadband supply must evolve to fulfill its promise as an empowerment tool for industry, consumers and communities alike. This requires broadband connections that make telephone, multichannel video and video-on-demand, as well as data services possible simultaneously through one Internet connection. No consumer in the U.S. has access to such a broadband connection today.
- I will continue work to address the supply problem through broadband deregulation legislation that will spur competition, and create marketplace incentives not only for the deployment of broadband, but for the deployment of superior broadband connections compared to today's rudimentary services. I again urge you to resolve the content and demand side of this issue.